TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 361.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, THE LA CROSSE AND MINNESOTA STEAM PACKET COMPANY, CLAIMANT AND RESPONDENT, AND LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANTS, APPELLANTS,

vs.

JOHN ROBSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT WISCONSIN.

FILED DECEMBER 11, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 351.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, THE LA CROSSE AND MINNESOTA STEAM PACKET COMPANY, CLAIMANT AND RESPONDENT, AND LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANTS, APPELLANTS,

vs.

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1 Circuit Court of the United States of America for the District of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the Circuit Court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of September, A. D. 1867.

Present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Cassius Fairchild, marshal; Edward Kurtz, clerk.

Among other, the following proceedings were had, to wit:

JOHN ROBSON, libellant,
vs.
THE STEAMBOAT NORTHERN BELLE AND BARGE Pat Brady, The La Crosse and Minnesota Steam Packet Company, claimant and respondent, and Lewis J. Higby and David Ferguson, stipulators of said claimant. } Appeal in admiralty.

Be it remembered that heretofore, to wit, on the fourteenth day of March, A. D. 1867, a certified copy of record in said cause in the District Court of the United States for the district of Wisconsin, was received from the clerk of said court and filed in the clerk's office of this court, as follows, to wit:

2 District Court of the United States of America for the District of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the District Court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the tenth day) of September, A. D. 1866.

Present, the Honorable Andrew G. Miller, judge of the said court, presiding; Cassius Fairchild, marshal; John M. Miller, clerk.

Among other, the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT NORTHERN BELLE AND Barge Pat Brady, The La Crosse and Minnesota Steam Packet Company, claimant. } In admiralty.

Be it remembered that heretofore, to wit, on the seventeenth day of July, A. D. 1865, came the said libellant by his proctors, Messrs.

Emmons & Van Dyke, and presented to the court his libel against the steamboat Northern Belle, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and the barge Pat Brady, as follows:

In admiralty.

Libel.

To the judge of the District Court of the United States for the District of Wisconsin:

John Robson, of Hastings, in the State of Minnesota, exhibits this his libel against the steamboat called the Northern Belle, whereof Judson I. West now is or lately was master, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and barge P. Brady, in a cause of contract, civil and maritime, and thereupon doth allege and articulately propound as follows, to wit:

3 First. That the said steamboat and barge now lying at La Crosse in the district aforesaid are respectively of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose were employed in the business of commerce and navigation between ports and places in different States of the United States upon the Mississippi river, a river navigable from the sea.

Second. That on or about the 19th day of June, 1865, the said steamboat and barge was the property of and in the employ of the La Crosse and St. Paul Packet Company, and the said steamboat with the said barge in tow, whereof the said West was master, being then at Hastings, in the State of Minnesota, and designed on a voyage upon the Mississippi river aforesaid, from Hastings aforesaid to La Crosse, in the State of Wisconsin, within the admiralty and maritime jurisdiction of this honorable court, the libellant being the owner of 4,002 40-60 bushels of wheat of the value of $4,002 67-100, shipped on board the said steamboat and barge; the said wheat in good order and condition to be carried and transported on board thereof from Hastings aforesaid to La Crosse aforesaid, in like good order and condition, and there to be delivered in like good order and condition, and reshipped to M. S. Nichols & Co., of Chicago, Illinois, the unavoidable dangers of river and fire only excepted in consideration of certain freight and charges to be paid upon delivery of said wheat to consignees or their assigns. That the said libellant received therefor a bill of lading, receipt, and con-

4 tract, a copy of which is hereto annexed, marked exhibit "A" and made a part hereof.

Third. That the said steamboat shortly afterwards departed on her said voyage with said barge in tow, with said wheat on board, but the said master as aforesaid, not regarding his duty in that respect, nor his undertaking to convey and deliver the said wheat as aforesaid, did not so convey and deliver the same, although no unavoidable dangers of river or fire prevented him from so doing, but on the contrary thereof by reason of the unseaworthyness of said steam-

boat and barge, and the decayed, weak, and rotten condition of said barge and its entire unfitness to carry wheat in bulk, and by reason of the negligent and careless conduct of the master with respect to said wheat, that by and through the mere carelessness, negligence, and improper conduct of the said master and his mariners and servants, and the insufficiency and unseaworthiness of the steamboat and barge, the said wheat became and was wholly wetted and greatly damaged and wholly lost to the libellant, by reason whereof the libellant has sustained damages to the amount of $4,002 67-100, for which he claims reparation in this suit.

Fourth. That at the time of the above loss and damage of said wheat, the same was insured for the sum of $4,002 67-100 in the Home Insurance Company of the State of New York, which loss has not been adjusted or paid.

Fifth. That all and singular, the premises are true. Wherefore the libellant prays that process in due form of law may issue against the said steamboat Northern Belle, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and barge Pat Brady, and that this honorable court will pronounce for its aforesaid demand and decree the same to be paid with interest from the 19th day of June, 1865, besides costs, and for such other relief in the premises as to right and justice may appertain.

JOHN ROBSON,
By EMMONS & VAN DYKE,
Proctors.
EMMONS & VAN DYKE,
Proctors.

DISTRICT OF WISCONSIN, *ss*:

On the 17th day of July, A. D. 1865, appeared before me Henry S. Durand, who was sworn to the truth of the foregoing libel.

J. M. MILLER,
Clerk U. S. District Court, Wisconsin.

Exhibit "A."

HASTINGS, MINN., *June 19th*, 1865.

Shipped in good order and condition by John Robson, for account himself, on board the steamer Northern Belle, whereof ——— West, is master, the following articles as here marked and described, to be delivered in like good order and condition, as addressed on the margin (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 28 cts. per bus. to Chicago. Freight and charges to be paid as noted below upon the actual and complete delivery of the said goods and freight to said consignees or their assigns. Privilege, lighting, towing, and reshipping.

In witness whereof, the owner or clerk of said boat hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished the other to stand void.

Marks.	Articles.	Weight.

To M. S. Nichols & Co., Chicago, Ills., via La Crosse and North-Western RR., bulk, barge Pat Brady, containing 4,002 46-60 bus. wheat (more or less.)
Endorsed : J. M. Bell.

Libellant's stipulation.

And same day (July, 1865,) came said libellant and filed his stipulation for the payment of costs, as follows :

6 District Court of the United States, for the district of Wisconsin.

Whereas, a libel was filed in this court on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by John Robson against steamboat Northern Belle, her engines, boiler, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereto hereby consenting, and agreeing that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels and lands, for the sum of two hundred and fifty dollars.

Now therefore it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulator undersigned shall be and he is bound in the sum of two hundred and fifty dollars; conditioned that the libellant above-named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this court, or in case of appeal, by the Appellate Court.

JOHN ROBSON,
By EMMONS & VAN DYKE,
His Proctors.
WM. T. BONNIWELL.

Taken and acknowledged this 17th day of July, 1865, before me.
J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss* :

Wm. T. Bonniwell, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.
WM. T. BONNIWELL.

Sworn to, this 17th day of July, 1865, before me.
J. M. MILLER,
U. S. Commissioner.

7 *Order for process and advertisement.*

Whereupon it is ordered by the court that a monition issue to the marshal, returnable on the seventeenth day of August next, at eleven clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof.

And it is further ordered that notice be given by advertisement in the , a daily paper printed in the city of , and by notices posted in the most public manner at and near the place of trial for at least six days.

Whereupon a monition issued as follows:

8 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the District Court of the United States for the district of Wisconsin, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by John Robson against the Steamboat Northern Belle, her boilers, engines, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the seventeenth day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States, for the district of Wisconsin, at the city of Milwaukee, in said district, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

[SEAL.] J. M. MILLER, *Clerk.*

EMMONS & VAN DYKE,
Proctors for libellant.

[50-cent stamp.]

9 *Return.*

In obedience to the within precept I have this 26th day of July, A. D. 1865, attached the steamboat Northern Belle, her engine, boiler, boats, tackle, apparel and furniture at La Crosse, and have given due notice to all persons claiming the same, by posting notices, that this court will on the seventeenth day of August, A. D. 1865, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same and they make their allegations in that behalf.

D. C. JACKSON, *Marshal.*
By W. S. JACKSON, *Deputy.*

Fees $14 30.

Claimant's stipulation.

JULY 26, 1865.

This day came the La Crosse Packet Company as claimant of said steamboat Northern Belle, her engine, &c., and barge Pat Brady, and presented its stipulation with David Ferguson and Lewis J. Higby as sureties, in the sum of eight thousand dollars that it will abide and answer the decree of this court in this cause.

And said claimant's stipulation is as follows:

10 District Court of the United States for the district of Wisconsin, in admiralty.

Whereas a libel was filed on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by John Robson against steamboat Northern Belle, her boats, &c., and barge Pat Brady, for the reasons and causes in the said libel mentioned. And whereas the steamboat Northern Belle, her boats, &c., and barge Pat. Brady are in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from the said monition now on file in said court.

Appearing personally La Crosse Packet Company as the claimant of the said Northern Belle and Pat Brady, and produced for sureties Lewis J. Higby and David Ferguson; and the said Lewis J. Higby and David Ferguson, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors and administrators, in the sum of five thousand and five dollars unto the said John Robson, that the said Lewis J. Higby and David Ferguson shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above-mentioned.

L. J. HIGBY.
D. FERGUSON.

Taken and acknowledged this 26th day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss*:

Lewis J. Higby, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of eight thousand and two dollars over and above all his just debts and liabilities.

L. J. HIGBY.

Sworn to this 26th day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

11 *Order for warrant of restitution.*

Whereupon it is ordered by the court that a warrant of restitution be issued to restore the said steamboat Northern Belle, her engines, &c., and barge Pat Brady, to the said claimant.

Warrant of restitution issued as follows:

12 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the District Court of the United States for the district of Wisconsin, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by John Robson against the steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat. Brady; praying that the same may be condemned as forfeited to the said libellant. And whereas the said steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, have been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas, also, a claim has been interposed and filed in said court by the La Crosse Packet Company, and such proceedings have been thereupon had that by the sentence and decree of said court in this cause made and pronounced on the twenty-sixth day of July, eighteen hundred and sixty-five, the said steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, was adjudged to belong as claimed, and was ordered to be restored to the said claimant: therefore you, the said marshal, are hereby commanded to release the said steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady from arrest, and to deliver and return the same unto the said La Crosse Packet Company.

And what you have done in the premises do you make return thereof before the said Court of Admiralty on the seventeenth day of August next, at eleven o'clock in the forenoon of said day, if the

same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of these United States the ninetieth.

[SEAL.] J. M. MILLER, *Clerk.*

13 *Return to warrant of restitution.*

"Warrant of restitution returned: In obedience to the within warrant of restitution, I have, this 26th day of July, A. D. 1865, released the said steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture from arrest as commanded.

"D. C. JACKSON, *Marshal.*
"By W. S. JACKSON, *Deputy.*"

Answer.

SEPTEMBER 14, 1865.

This day came the claimant, the La Crosse and Minnesota Steam Packet Company, by John W. Cary, its proctor, and filed its answer, as follows:

In admiralty.

To the judge of the District Court of the United States for the district of Wisconsin:

The answer of the La Crosse and Minnesota Steam Packet Company, owner and claimant of the steamboat Northern Belle and barge Pat Brady, to the libel of John Robson against said steamboat and barge.

And now comes the La Crosse and Minnesota Steam Packet Company, owner of the said steamboat Northern Belle and barge Pat Brady, and for answer to the libel of John Robson against the said steamboat and barge, doth allege and propound as follows, to wit:

14 First. That the said La Crosse and Minnesota Steam Packet Company is a corporation duly created and organized under and by virtue of the laws of the State of Wisconsin, and is the true and bona fide owner of the said steamboat Northern Belle and barge Pat Brady, and that no other person or corporation is the owner thereof.

Second. That the first article of said libel is true.

Third. That it is not true that on or about the 19th day of June, 1865, the steamboat Northern Bell and barge Pat Brady were the property and in the employ of the La Crosse and St. Paul Packet Company, or that said libellant shipped any portion of said 4,002 40-60 bushels of said wheat on board of said steamboat, as in the second

article of the said libel is untruly stated; that the remainder of said second article of said libel is true, except as to the value of said wheat, of which the respondent has no knowledge.

Fourth. That it is not true "that said master, as aforesaid, not regarding his duty in that respect, nor his undertaking to convey and deliver the said wheat as aforesaid, did not so convey and deliver the same, although no unavoidable dangers of river prevented him from so doing; but on the contrary thereof, by reason of the unseaworthiness of said steamboat and barge, and the decayed, weak and rotten condition of the said barge and its entire unfitness to carry wheat in bulk, and by reason of the careless conduct of the master with respect to said wheat; that by and through the mere carelessness, negligence and improper conduct of the said master and his mariners and servants, and the insufficiency and unseaworthiness of the said steamboat and barge, the said wheat became and was wholly wetted and greatly damaged and wholly lost to the libellants," as in the second ar-
15 ticle of the said libel is untruly alleged and pleaded; for the truth and fact was and is, and the respondent doth allege and propound, that on the 19th day of June, A. D. 1865, the said steamboat Northern Belle, being on a voyage from St. Paul to La Crosse, at the landing at Hastings, Minnesota, took in tow the barge Pat Brady, laden with 4,002 40-60 bushels of bulk wheat, more or less, for account of John Robson, at Hastings; that at the time said barge was taken in tow by said steamboat Northern Belle, said barge Pat Brady and said steamboat Northern Belle were both and each of them tight, staunch and strong, and in every respect fit to perform their said intended voyage from said landing at Hastings to the city of La Crosse, in Wisconsin, and were in all respects seaworthy; that the wheat in bulk in said barge Pat Brady was well and carefully loaded into said barge, in a proper and secure manner; that the said barge laden as aforesaid, was taken in tow by the said steamboat at Hastings, and that the said steamboat having the said barge in tow with proper fastenings and tow lines, left the landing at Hastings aforesaid on the 19th day of June, A. D. 1865, on her said voyage from St. Paul to La Crosse aforesaid, and proceeded on her voyage down the Mississippi river; that when opposite the city of Prescott, in the State of Wisconsin, the wind was so strong and blew so hard that it drove said barge on to a bar opposite said city of Prescott, so that said barge grounded on said bar, and while so aground, and in consequence of the strain and injury thereby received and the violence of the storm, commenced leaking; that said barge was carefully and skilfully towed by said steamboat, and was, up to the time of getting aground as aforesaid, dry, tight and staunch, and that the said steamboat and barge were properly, carefully and skilfully moved with proper lines and fastenings, and that although every effort was
16 made to prevent the cargo of said barge from getting wet and being injured, the said barge, while so aground, did fill with water so as to wet and injure about fifteen hundred and seven bushels of said wheat, so that it was greatly damaged thereby; and that by the exertions of the said master and crew of said steamer, two

thousand four hundred and ninety-five bushels of said wheat was saved in good condition and delivered at La Crosse, and was afterwards, by direction of said John Robson, shipped to M. S. Nichols & Co., of Chicago, Illinois, as provided in said bill of lading; that the remainder of said wheat, in consequence of the grounding of said barge, became wetted, injured and damaged, and a portion thereof was wholly lost, and the balance thereof was saved in a damaged condition and was perishable; and that, in order to prevent its total loss, this respondent was compelled to sell and dispose of, and then and there did sell, the same for one hundred and three 50-100 dollars, that being the best price that could be obtained for the same, and all it was worth under the circumstances. And this respondent says that in so far as it failed to deliver said wheat, it was prevented from so delivering the same at La Crosse by the unavoidable dangers of river navigation and not in any manner by the fault of this respondent, or on account of the insufficiency and unseaworthiness of said steamboat or barge, or by the want of proper care, skill and precautions of said master or mariners, as charged in said libel.

Fifth. That this respondent was put to great labor, cost, trouble and expense in raising said barge Pat Brady and saving said wheat, and that in said business this respondent necessarily employed said steamer Northern Belle, her master, mariners and crew for twelve hours, and that the time and value of the use of said steamer, master, mariners and crew while so engaged was reasonably worth the sum of
17 one hundred and fifty dollars; and this respondent in the same business paid out and expended the further sum of thirty and 50-100 dollars in money, making the sum of one hundred and eighty and 50-100 dollars expended and incurred by this respondent in saving and preserving said wheat.

Sixth. That prior to the said 19th day of June, 1865, to wit, on the 12th day of May of said year, the said John Robson, at said Hastings, shipped on board the said barge Pat Brady, then and now owned by this respondent, five thousand bushels of wheat in bulk, to be delivered at La Crosse, and on the same day said barge, so laden, was taken in tow at Hastings aforesaid by this respondent's good steamer Keokuk, bound on a voyage from St. Paul to La Crosse, the said barge being tight, staunch and strong, and in all respects seaworthy, and well and duly equipped and officered and fit to perform said voyage; and that said steamboat Keokuk and barge proceeded on said trip without accident, until eleven o' clock in the afternoon on the said 12th day of May, 1865, when said steamboat and barge, while prosecuting her said trip, and being in her proper place and channel in the Mississippi river, and her officers and crew being in their respective proper places and attending to their proper duties, and when near the head of a place known as Buffalo Slough, near a place known and called Minneska, said steamboat and barge being then and there skilfully, carefully and properly navigated and managed, the said barge struck a hidden, concealed and unknown snag in said river, causing said barge to spring a leak so as to cause her to sink within the space of thirty minutes, in four feet of water in said river,

whereby said wheat so laden in said barge, or the greater por-
18 tion thereof, became wet and damaged; and this respondent was prevented from delivering said wheat at La Crosse by the unavoidable dangers of the river navigation, and not by the carelessness or unskillfulness of the master and mariners of said steamboat, or by the unseaworthiness or insufficiency of said steamboat or barge; that in order to save said wheat from total loss, this respondent used every exertion in its power, and in and about that business was put to great labor and incurred large expenses and costs, and paid out the several amounts and rendered the services following, to wit:

Paid C. L. Brown for 46 days' board of men	$69 00
J. Smith for ferrying	2 00
H. S. Semmerman for baskets and pails	3 00
men for labor in water 86 days, at $5 per day	430 00
for use of rigging	50 00
for services of steamer Favorite, 3 days	450 00
labor by Favorite	6 40
Amounting to the sum of	$1,010 40

That the freight earned in carrying said cargo of wheat before the sinking of said barge, taking a pro-rata amount of the contract price for the whole distance, amounted to the sum of three hundred and eight and 50-100 dollars; that this respondent succeeded in saving a large portion of said five thousand bushels of wheat, but in a wet and damaged condition, and after so saving the same proceeded therewith in tow of this respondent's steamer Northern Belle for La Crosse; and that when this respondent arrived at Winona, in the State of Minnesota, with said wheat, the agent of the Home Insurance Company of New York, in which company the said John Robson had insured said wheat, came on board of said steamer, and demanded that said wheat so saved from the said barge Pat Brady, and then and there of the value of fifteen hundred dollars and over, should be delivered to said Home Insurance Company at Winona; and in pursuance of said demand said wheat was then and there
19 by this respondent delivered to and accepted by said Home Insurance Company, without the payment of said freight and wrecking charges; that the whole amount of freight and wrecking charges due this respondent on account of said cargo of wheat amounts to the sum of thirteen hundred and eighteen 90-100 dollars, no part of which was paid to this respondent by said libellant or said Home Insurance Company; that the balance due this respondent for labor and expense of saving said cargo of wheat mentioned in the libel in this action, is the sum of seventy-seven dollars over and above the proceeds of the wet wheat sold as aforesaid, making together the sum of $1,395 90-100 due this respondent from said John Robson, over and above the regular tariff rate of freight on said cargo in the libel in this case mentioned; that on the wheat so as aforesaid shipped to M. S. Nichols & Co. this respondent collected its regular tariff rate of freight from Hastings to La Crosse, and the said sum of $1,395 90-100 for said advanced charges as aforesaid.

Seventh. That this respondent admits, on information and belief, that at the time of the loss or damage of said wheat the same was insured for the sum of $4,002 67-100 in the Home Company, of the State of New York, as alleged in the fourth article of said libel; and this respondent is uninformed as to whether the same has been adjusted or paid, and leaves the libellant to his proofs; but this respondent says that this action is in fact prosecuted by the said Home Insurance Company and for its sole benefit, in the name of the said libellant, but wholly at the cost and expense of said Home Insurance Company.

Eighth. That all and singular the premises are true. Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the libellant in cost, and otherwise right and justice to administer in the premises.

[SEAL.]

WM. RHODES,
Sec'y La X & Minn. S. P'k't Co.

JOHN W. CARY,
Proctor.

DISTRICT OF WISCONSIN, *ss*:

Be it remembered, that on the seventh day of September, A. D. 1865, personally came before me William Rhodes, and made oath that he is one of the officers of the La Crosse & Minnesota Steam Packet Company, the respondent named in the foregoing answer, to wit, its secretary; that he has read said answer and knows the contents thereof, and that the same is true, to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAM'L S. BURTON,
County Judge La Crosse Co., Wis.

District Court of the United States for the district of Wisconsin.

Libellant's testimony.

JOHN ROBSON
vs.
S'BOAT NORTHERN BELLE AND BARGE PAT BRADY, La C. and Minn. Packet Co., claimants.

Depositions of witnesses, taken by consent, before me, J. M. Miller, clerk and U. S. com'r, dist. of Wisconsin, at Winona, Minnesota.

Present, John H. Van Dyke, proctor for libellant, and Messrs. John W. Carey & William Hull, respondent's proctors.

Deposition of Jno. Robson.

John Robson, witness for libellant, being sworn, deposed and said:

Quest. Are you the same John Robson, of Winona, Minnesota, examined in the case of yourself against the Keokuk and barge Farley?

Anr. I am, sir.

21 Quest. Did you on or about the 19th June, 1865, ship wheat, and if yea, what kind of wheat, value of same, and on the Pat Brady, in tow of the s'boat Northern Belle, for which you received a bill of lading for 4,002 40-60 bushels of wheat? If yea, state the am't so actually shipped and its value.

Anr. That is the am't I shipped; think that is correct. $1 per bushel was the value when I made out the bill, when it was shipped in good condition. It was sunk, or rather the barge made water and wetted part of the wheat. The wheat saved in good order was forwarded to its destination, but subject to charges claimed by the company, the correctness of which claim I do not admit. The wet wheat or its proceeds I never had. The P. Brady was a very old barge; I had considered her good up to that time; don't think she was fit to carry a full load of wheat in bulk, because she was old and generally weak.

Cross-examined.

The knowledge of the P. Brady I have is, that I saw her when she wet this wheat, and I don't think a moderately good barge would have done it. This opinion is based upon the circumstances that I saw her in when she struck. She had only a moderate load on her; and where she lay the bed of the river was all sand; and I should say from the little knowledge I have of barges, that any barge that would spring a leak from the shock she got was not fit to carry wheat. The s'boat had 2 barges in tow at that time, both partially loaded; the water was so low that they could not be filled. The barge's full load would be about 5,000 bushels; she had on about 4,000 bushels. The wind was blowing not particularly strong, not a full gale, quite a breeze; enough to make the boat flank a little. It was just at the inlet of Lake St. Croix. The weight of the s'boat and the other loaded barge was sufficient to open the seams of this barge, and might

22 any other barge; have known her for about 3 years. I heard that she was repaired and name changed in 1863; have no practical knowledge of ship building; have no knowledge of barges except what I have gained in loading them during the last 6 years. In the fall of 1863 I loaded her; don't think I loaded her in 1864; loaded her several times in 1865.

Quest. After the accidents of May 12th and June 19th, did Mr. Durand, ag't of the Home Ins. Co., tell you that he would take risks of wheat in bulk in barge P. Brady?

(Objected to as immaterial and inadmissable.)

Ans. After those losses Mr. Durand took exception to two barges,

and the P. Brady was one of them, and the Brady was overhauled or rebuilt in the fall, and Mr. Durand said he would take her again.

Quest. Has the Home Ins. Co. paid you the loss sustained on the wheat on the P. Brady in June, 1865?

(Objection same as above.)

Ans. They paid me the am't I claimed on condition that this suit was prosecuted by me or in my own name. The proceeds of the suit to go to them, and prosecuted at their expense. That payment was made in some time July or August before, as Mr. Van Dyke says, the suit is brought.

Quest. Was there any agreement with the Home Ins. Co. before this suit was commenced that you should commence a suit in your name; that it should be prosecuted at their expense, and for their benefit, and that they would, after the suit was commenced, pay you the am't of your loss?

(Objected to as immaterial and inadmissable.)

Ans. There was such an agreement, and it was made about the time, but exactly how I can't say now.

Quest. Was the suit commenced in pursuance of such agreement?

(Same objection.)

Ans. I think the suit was begun in my name before I consented; the suit was commenced in my name by Mr. Durand. I think
23 the suit was commenced in my name by Mr. Durand before I consented.

Ques. Did you authorize the commencement of this suit, or was it brought on his own motion?

(Same objection.)

Ans. I did not authorize the bringing of this suit, as it was brought before I consented.

Re-examined.

Quest. Was not that suit brought in your name and with your sanction for the reason as claimed by the ins. co., that the barge was so utterly unseaworthy that there was a question whether the policy ever attached, but as to you they would waive the question, if the suit was instituted by you?

(Objected to as incompetent.)

Ans. The question of the policy attaching was discussed, and payment delayed for some time on that account, but I still think the suit was brought before I consented, to which I afterwards consented to.

Quest. Did you not furnish Mr. Durand or J. H. Van Dyke a bill of lading before the suit was brought for the purpose of instituting a suit for the loss or damage therein mentioned?

Ans. I gave this bill to Mr. Durand for exactly what purpose I can't recollect, but I think it was for a settlement, but may have been for purpose of commencing suit.

Quest. You stated that you were at the mouth of Lake St. Croix at the time the barge Brady went on the bar at Prescott. Was the wind anything unusual at that place?

Ans. I was at the mouth of Lake St. Croix coming down; saw the boat when she struck; think there was only a moderate wind; had not noticed any unusual wind.

Quest. What was the occasion of her striking; on what did she strike, and how hard did she strike?

(Objected to.)

24 Ans. I thought she was out of the channel; did not observe any other reason, and did not observe that she struck very hard; she struck on the sand in shoal water broadside on.

Cross-examined.

I may have been distant from the N. Belle, when she struck, from ¼ to ½ mile.

JNO. ROBSON.

Subscribed and sworn to before me May 21st, A. D. 1866.

J. M. MILLER, *U. S. Com'r, Wis.*

District Court of the United States for the district of Wisconsin.

JOHN ROBSON
v.
STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, LA CROSSE & MINNESOTA STEAM PACKET CO., claimant. } In admiralty.

Deposition of witness for libelant taken by consent before me, J. M. Miller, clerk U. S. District Court and U. S. commissioner, Wisconsin, at the city of Milwaukee, Wisconsin, on this 6th day of July, A. D. 1866. Present, John H. Van Dyke, esq., proctor for libelant, and John W. Cary, esq., proctor for respondent.

Deposition of H. S. Durand.

Henry S. Durand, witness for libelant, being duly sworn, deposed and said:

This suit was brought by authority of John Robson. The insurance company had not paid him the loss at the time suit was brought. They have since advanced him the am't of his claim on the company for the loss. There was 1,507 bushels of wheat wet. The balance 2,495 bushels went forward to the consignees. The respondents received and retained $103 50 the proceeds of the wet wheat, and forwarded the balance 2,495 bushels of dry wheat to its des-

25 tination, subject to $1,396 22 alleged salvage services, which Robson was compelled to pay, and which the company advanced to him pending the suit, making the am't paid to him $2,797 73. I do not know what wheat was worth at that time, nor do I know whether the am't advanced to him covered the value of the wheat lost.

Cross-examined.

I think the am't advanced to him was the full am't claimed by him for that loss. The advance was made to Robson about Sept. 22, 1865.

Quest. Was this suit commenced, and has it been prosecuted since its commencement entirely at the expense, for the benefit, and under the control of the Home Ins. Co.?

(Objected to as immaterial.)

Ans. The Home Ins. Co. was to bear the expense of the prosecution of the suit, and I suppose, under its control, and to have the benefit of any monies to be recovered.

Quest. Did you, as agent of Home Ins. Co., cause the suit to be instituted, and verify the libel?

Ans. I verified the libel; the witness further states that the Home Ins. Co. denied any legal liability on account of this loss for the reason that the craft, upon which the wheat was shipped, was unseaworthy, but agreed with Mr. Robson that in case he would bring a suit against the carrier for the same, that the company would advance him the amount of his claim against them, and that they would also pay the expense of the suit. The company to be reimbursed such advances from any monies that might be recovered from the carrier. The suit was brought under that arrangement.

Quest. When, where, and by whom was that arrangement made with Mr. Robson, and was it verbal or in writing?

(Same objection as last above.)

Ans. I don't remember precisely the time, but it was made
26 at his office at Winona with him. I made it myself, and it was verbal. It was made shortly before the suit was commenced. I was up the river on a general trip when I was at Winona.

HENRY S. DURAND.

Subscribed and sworn to before me July 6th, A. D. 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

District Court of the United States for the district of Wisconsin.

Respondent's testimony.

JOHN ROBSON
vs.
STEAMBOAT NORTHERN BELLE & BARGE PAT Brady, La Crosse and Minnesota Steam Packet Company, claimant. } In admiralty.

Depositions of witnesses taken by consent before me, J. M. Miller, clerk and U. S. commissioner, U. S. District Court, Wisconsin, on this sixteenth day of May, 1866, at the city of La Crosse, Wisconsin. Present, John H. Van Dyke, esq., proctor for libelant, and Messrs. John W. Cary and Wm. Hull, proctors for respondents.

Deposition of Judson T. West.

Judson T. West, witness for respondent, being duly sworn, deposed and said:

I reside at St. Paul, occupation steamboat captain; in employ of La Crosse & Minn. Steam Packet Co., as captain during season of 1865; captain of the Northern Belle; been engaged in navigating Upper Miss. for 14 years; acted as pilot for 11 years, up to 3 years ago; am well acquainted with navigating on this river. I recollect the stranding of the Pat Brady near Prescott last summer (1865.) It was about June 19th, 1865. Left St. Paul the morning of the day of this occurrance about 10: 30 o'clock in the S. B. Northern
27 Belle; took in tow, on leaving St. Paul, the barge Jack Frost; came down to Hastings, and there took in tow the barge Pat Brady. The Pat Brady was on the starboard side. As soon as we left Hastings, I went below, and examined the barge, found her to all appearances in good order; no water in her; came down to Prescott bar where we ran aground; after a short time succeeded in getting boat off of bar, the barge still remaining on bar. We then undertook to get the barge off of bar; made the steamboat fast above the bar on shore. We ran a line from s'boat to barge, and have a heavy strain on the line. Barge did not appear to move any, whereupon I thought there was something wrong about it. I got on the yawl, and went over and got on barge; upon examination found about 15 inches of water in her, then got all the pumps we had on to the barge and tried to pump the water out of her, but found the water still gained upon us. We, however, succeeded in keeping the water down sufficiently to secure a great portion of her cargo of wheat in good order In my judgment the cause of her springing aleak was by her striking the bar, and the weight of the s'boat, at the time of her running aground, pressed against the barge with sufficient force to open her seams, and caused her to leak. I did not consider her hard aground when she first got aground, and after she got water in her and settled down she was hard aground. The wind was blowing down stream quite hard. Had 2 barges in tow. At time of going

on bar, s'boat was quartering across the stream towards the landing at Prescott.

Quest. Was there any peculiarity in the navigation of the stream at that point at that stage of water, and if so, what was it?

Ans. This was one of the most troublesome bars on the river at that season on account of the low water. Had to make a very short turn around the foot of the point, and there is a very narrow
28 channel between that point and the sand bar on the starboard side, that turn being made to the larboard. The wind was blowing quite hard, and blew us on to the bar. The wind struck the vessel on the larboard side. The wind striking us on the larboard side, as we turned the point, we had to stop the engines in order to make the turn around said point. Before we could make the turn and get under headway, the wind had drifted us down until we could not clear the bar. We hoped to clear the bar, but did not know whether we should or not when we went ahead, and we did strike the bar. The Jack Frost was on larboard side, and Pat Brady on starboard. The wind blowing on the larboard side would have the effect of pressing against or bring the weight of the steamer and other barge on to the barge Pat. Brady with considerable force. The s'boat had on about 75 tons as near as I recollect. The barge Jack Frost was loaded very near to her capacity. Her capacity is about 3,800 bushels, I think.

Quest. Would the pressure of the s'boat and the barge J. Frost, driven by the wind as it was then blowing against the side of the Pat Brady, been sufficient to have opened her seams so as to have caused the leak, the Brady being fast upon the bar, if she had been in good condition and seaworthy.

(Objected to as immaterial.)

Ans. I think the force would be sufficient to cause the leak, if she was in good condition.

Quest. State whether the manner of the injury as described in the last question and answer is the way in which you think the injury to have occurred?

(Objected to as inadmissable.)

Ans. I believe it was. The Northern Belle, I think, is about 237 feet in length, 32 feet beam, 4½ hold. These dimensions are as near as I recollect. Has upper cabins, first class upper river boat; was in good condition for navigation at time of accident. We were
29 full manned at the time. The barges were properly fastened for navigation.

Quest. State how the steamer was navigated and handled at time of accident in respect to care and skill.

(Objected to as leading and inadmissable.)

Ans. In my opinion the s'boat was handled with all the care and skill that she could have had; Mr. Frank Tisson acting as pilot at the time. He is considered by myself and all steamboat men in this trade as a competent and skilful pilot.

Quest. Was there any want of care or skill that contributed to produce this injury?

(Objected to, that this is question for the court to determine from the facts given and not experts.)

Ans. I think there was none. Have been acquainted with barge P. Brady for 3 or 4 seasons; not positive which. She has been engaged in fetching bulk wheat from St. Paul and other places to this place. Her capacity is about 5,000 bushels. Her condition at the time of this accident, according to my knowledge as I had towed her on several trips not long previous to this occurrance, and she had never leaked, she was considered by myself a staunch and seaworthy barge. I remained at the bar with the Pat Brady about 13 hours, first place, trying to get her off the bar, afterwards trying to pump the water out of her, and lastly keeping the water down as low as possible, in order to save a portion of the cargo. I left her in charge of Charles Barnes with one man to watch her and keep a light on her when I left. I took up a wrecking crew on my return trip; they raised the barge; they shovelled the wheat partly into the river, and some on another barge. All suitable and proper efforts were made on my part to save the cargo. I did not remain with the wreckers. Capt. Dan. Thayer was captain of the wreckers. The Pat Brady has been in the same trade since, and has been running regularly. I made the protest on the day of its date; Morrison, one of the signers of the protest, I have heard, is up at the Vermillion gold mines.

Protest offered in evidence.

The respondent's proctor here offers the said protest in evidence, and marked exhibit "A."

(Libelant's counsel objects to its admission as evidence on the part of the respondents.

Cross-examined.

Quest. Have you ever towed the P. Brady since the 19th of June?

Ans. I have. Don't remember how often. I don't know what repairs were made to her after this accident; she was repaired. I don't know that her build was changed, or that her knuckles were altered.

Quest. Did you ever see the P. Brady when her planking was off, or floor up, so as to examine her build and timbers.

Ans. I saw her in that condition, but never examined her. Do not know where she was built, or how old she is, nor where she was brought from. Positive she was not built here. Never built or assisted in building a barge. Have no practical knowledge in building or constructing barges.

Quest. What is the draught of the P. Brady with 4,000 bushels of wheat on board?

Ans. Between 3 and 3½ feet. Don't know exactly.

Quest. What is the draught of the Northern Belle with 75 tons on board.

Ans. Three (3) feet.

Quest. What is the breadth of water between the bar where the P. Brady grounded, and the point of land you were making?

Ans. The breadth of channel was at that time, not over two hundred feet, I should judge, for boats to pass. This was a sand bar. It is well known. I don't remember how long it has been there.

31 For a number of years when low water; sand bar was not above water at that time. The Jack Frost did not strike bottom.

Quest. You say that is your opinion that the steamer pressed against the side of the barge when she struck the bar? Have you any positive knowledge of the fact, and if yea, what knowledge.

Ans. My knowledge is the sides of the barge were lying against the steamer, as we had her in tow, the heft of the steamer and the other barge came against her when she struck the bar. The barge was not broken in any way, to my knowledge.

Quest. Have you any knowledge that she had made water until your first effort to draw her off.

Ans. No, sir; never got any other barge on that bar. It was the usual channel in coming down the river. There was another channel at that stage of water. By taking the other channel you could not get to Prescott in that stage of water. Always stop at Prescott. Whenever the wind is blowing down stream it is a difficult place to make. When wind is blowing in that direction, it usually blows harder there than at any other point, on account of wind coming off Lake St. Croix. This was a clear day, but windy; rather warm. We went on the bar easily. The Northern Belle has two propelling engines; can back as well as forward; can back with one and go forward with the other. The bar is all sand deposit. I did not think the wind was blowing too hard to navigate the vessel. Have seen the wind blow harder, but this was a stiff breeze, and it was hard to make places. The Pat Brady was not chafed on the side of the steamer, to my knowledge.

Quest. You stated in your examination-in-chief, that after stopping your engines, we hoped to clear the bar, but did not know whether we should or not, when we went ahead and did strike the bar. Now, capt., why did you go ahead at all without knowing whether or not you could clear the bar?

32 Ans. Knowing that we should get aground if we did not go ahead, the wind blowing us down on the bar. If we had backed our boat, we would have gone aground on the bar below. If we had cast the barge off there would have been danger of striking her; there was not time to cast her off. I was then passing through this place every three days.

Quest. How happens it that, if this locality is so difficult for navigation, that you never got on this bar but this once?

Ans. That was the only trip that the wind was blowing as strong in same direction as I was passing down that channel in that stage of water with two barges in tow. There might have been danger with one barge in tow, you can't tell what a boat may do. There would have not been so much danger if we had but one barge in tow on

larboard side; wind blowing hard down the river all day. Blew down river all day. I knew course of the wind when we entered this channel, between the point and bar spoken of.

Quest. Did you know the difficulties of navigation at that point at that stage of water, and course of wind, with two barges in tow, before you attempted to pass through?

Ans. I did.

Quest. If you were so aware, and there was less danger with one barge, why did you attempt to run through with two?

Ans. Because I thought there was no danger but that she could go through with both, with two. I was perfectly familiar with the channel at that stage of water. Boat steered well, and machinery worked well.

Quest. Could you pass the same place with the same wind and stage of water, with two barges in tow, without getting aground?

(Objected to by respondent's proctor as immaterial.)

Ans. I think the boat ought to make it without getting the barges aground.

Quest. Could you pass the same place, with the same wind and stage of water, with two barges in tow, without danger of getting your starboard barge aground on the bar?

33 (Same objection as above.)

Ans. There would probably be danger of getting aground, but more probably of not getting aground than getting aground, and I so considered it at that time.

Quest. Do you know what part of the barge made water when on the bar?

Ans. I do not.

Re-examined.

The pilot has the running and handling of the boat when under way.

JUDSON T. WEST.

Subscribed and sworn to before me, this 16th day of May, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

Deposition of E. S. Martin.

Capt. E. S. Martin, witness for respondent, being sworn, deposed and said:

My business for several years has been steamboating and piloting, generally piloting for 10 or 12 years on upper Mississippi. Am acquainted with management of steamboats with barges in tow, on this river. I know the bar near Prescott; that was a difficult place to navigate, as the water was in June, 1865. Hard place to get around.

Quest. If the steamer Northern Belle, at that stage of water, was

coming down the river with a loaded barge on each side, and the wind blowing hard from Lake St. Croix, what would be the proper management to pass that place?

(Objected to as immaterial.)

Ans. In coming in there, crossing that point with barges in tow, I should run in across the point and let her swing round, stopping the engines. If she would not swing around, and was a side-wheeler, would back up on starboard wheel. By backing up on starboard wheel, and she would not come round, would go forward
34 with larboard wheel. A man has to use his judgment in handling boats, as they differ.

Cross-ex'd.

Quest. How wide was that channel at that time, June 19th?

Ans. I could not tell exactly; it is a narrow place, and was very narrow at that time. Coming around there, there is as much current at the point as usually is above. It is not over a 2½ mile current at that stage of water. Have run a large barge on that bar and stuck pretty tight. Pulled her off. The starboard barge ran on. Don't recollect name. Have stuck more than once there.

Quest. Is there any great danger in running a barge on there if it is properly ladened, and the barge is strong and seaworthy, that is danger to the barge and cargo?

Ans. There would be danger by the boat pressing against the barge, particularly if the wind is strong off the lake.

Quest. When the wind is strong off the lake, do you know before you enter that place, the danger that might occur to your starboard barge?

Ans. When we come to those narrow places we use our judgment to the best advantage. Don't calculate to sink a barge if we can help it. Sometimes in getting into a place like that, we have to use our best judgment in getting out. Do not know that we are liable to that accident before we go in, or I would not go in.

Quest. How then do you answer as you have answered, that with a strong wind off Lake St. Croix, coming down the river, that it is a dangerous place to pass with a barge on the starboard, and yet answer above, that you don't know that you occur that danger before you enter it, when the wind is off the lake strong?

(Objected to as immaterial and incompetent.)

Ans. Always calculate that when we enter a place, that I can go through, though sometimes may fail.

Quest. Is that good or bad seamanship to enter that narrow channel at the stage of water it had in June, 1865, with a barge on
35 either side the vessel, and a very strong wind blowing very hard from the lake, and if yea, why, and if not, why not.

Ans. If wind was blowing very hard, sufficient to make boats tie up, it would not be good seamanship, but pilots generally use their judgment about that. A boat might be coming down around that point and you might not feel the wind very strong, and when coming

in across that point you might feel the wind more than you anticipated. The length of this place where you came across is about 400 feet. The land at Point Douglass is high. Between Point Douglass and this point the land is low, but timbered. The distance from Point Douglass to this place is about 400 yards, all of a quarter of a mile.

Quest. When the wind is blowing hard down the river, how does it blow from the lake across this crossing?

Ans. When the wind is blowing hard down the Mississippi, don't have so much wind at the crossing. I did not understand the question exactly. I mean that it blows down the river it blows down from the lake. When it blows down the lake it blows down the river.

Quest. How much stronger does the wind blow down the lake as a general thing when it is blowing down the river?

Ans. I should think it would not blow as strong down the lake as down the river.

Quest. How long does it take to loosen a barge from the side of a steamer?

Ans. I can unhitch a barge in 10 minutes if I got at it leisurely; takes longer to hitch them on; depends upon how many men you have, and if they understand it, and how the wind is. If it is calm and men well drilled, it would take about ten minutes if the barge was lying just by me.

Quest. Would the wind blowing down the river at that place, and the boat coming down the river, is there any danger to the barge and her cargo getting on that bar with the barge on the larboard of the boat?

36 Ans. Not so much; depends whether the barge draws more water than the boat. Frequently stuck there with the barge on the larboard, and the boat not stuck, but not so much danger to the barge, because the weight of the boat does not come against it to crush the barge.

Quest. Is this place well understood by competent pilots?

Ans. Most generally; the difficulties are generally understood. It is the calculation of the pilots to pass this place; can't tell the proportion of boats that pass; did not pass often without stopping or rubbing; never crushed a barge there enough to sink her. Heard of one being sunk there sometime last summer. I don't know that in my experience of seven years, that I know of more than one barge sunk there; don't recollect, but think it was the Northern Belle that had the barge in tow at that time. She belonged to Capt. Davidson's company.

Quest. How many barges, or about how many freighted pass there in a month?

Ans. Can't tell how many; more this season than last; as many as one hundred a month. That is the channel in low water.

Re-examined.

The general course of the river, from Hastings to this place, is southeast. From St. Paul to this place, about same, more east than south, east of southeast. From this crossing, for several miles down the river, it is more of a south course. Lake St. Croix is 25 miles long and a mile wide. Portion of it is surrounded by bluffs, the lower part is a flat. The general direction is north and south. The wind blowing across St. Croix lake would not be felt so much by a steamer coming from St. Paul so much, as the bluffs protect you. There are some places, particularly at Prescott, at the mouth of the lake, where the winds would be felt. They would strike her
37 most at the mouth of the lake; that is the worst place. The mouth of the lake is right there at the crossing.

Quest. If a steamboat had a barge, or barges in tow on arriving at this point, and finding the wind strong and the passage difficult, would it answer to cut the barge loose, or would it be good management?

(Objected to as immaterial, and no excuse for former neglect.)

Ans. Would depend upon a man's judgment; one would think it better to cut loose, and another would not think so.

Quest. Would a barge loaded, at that point cut loose from the steamer be manageable?

Ans. No, it would not; not in the wind.

Quest. What would be the relative danger of loss of the cargo of barge under such circumstances, being cut loose, or remaining lashed to the steamer?

(Objected to as immaterial and inadmissable.)

Ans. I don't know. I can't tell; don't knew where the barge would drift to. It is not usual to cut them loose under any circumstances, except when she is full of water.

Cross-ex'd.

Quest. In case you should arrive at that point in coming down the river with two barges in tow, and when you would get under Point Douglass, what ought you to do if the wind was blowing so strong that you thought it difficult to make that point?

Ans. If I thought it difficult I would tie up. Would tie up until I thought it safe to go through. It would be a good place to lie under the lee of Point Douglass when the wind was blowing down the Lake St. Croix. I have been about 4 seasons in employ of Davidson's line.

Quest. Can you box the compass?

Ans. Don't steer by the compass in these waters; can't navigate with compass.

A. S. MARTIN.

38 Subscribed and sworn to before me, May 17th, A. D. 1866.

J. M. MILLER,
Com'r, Wis.

Deposition of A. Rooney.

Abraham Rooney, being called as a witness for respondent, and being sworn, deposed and said:

Resides in Winona county, Minn.; business, pilot; in employ of Davidson's line, and have been for 5 seasons; been engaged in piloting Upper Mississippi for nine years; licensed for five years; I understand navigating Upper Mississippi; I know the situation of bar between Point Douglass and Prescott Point; I knew it June, 1865; there was difficulty passing that bar all last summer; know steamer Northern Belle.

Quest. If the N. Belle had two loaded barges in tow, and was to make the crossing with a strong wind blowing down Lake St. Croix, how would you handle your boat at that point?

Ans. I should be governed altogether by circumstances; I should consider if I was coming down with the Northern Belle, or any good boat, I would hold her as close to the upper reef as possible, and then, if she planked to hard on me, I would be governed by circumstances which wheel I would back, or as how my boat was headed; it depends upon the way you came; you might come in half dozen different way and not handle the boat the same way twice; I would stop the engines, for at that stage of water I don't think a boat could make it without stopping them, one or both; have not keels on our boats like the lake boats.

Quest. If the steamer N. Belle, with a loaded barge on either side, should be driven by a strong wind from the lake sideways on to the bar on the starboard, how would it be likely to affect the barge on the starboard side.

(Objected to as immaterial and inadmissable.)

Ans. Depend a good deal how the wind was blowing; the
39 weight might be apt to crush it; it might crush in the barge or open her seams or jam in guards of boat.

Quest. Would this happen in such a contingency, or happen if the barge was staunch, tight and seaworthy?

(Objection same as last above.)

Ans. It don't matter how strong a boat or barge may be, she might be stove in.

Quest. Under the circumstances stated what would be the effect?

Ans. Under a strong wind it would most probably injure either boat or barge.

Cross-ex'd.

Quest. What do you mean by your last answer?

Ans. With the wind blowing out of the lake on to her larboard, she flanked down on to the bar, it would be very likely to injure either boat or barge.

Quest. What do you mean by flanking down on to the bar?

Ans. Rounding a boat too, or making a short crossing, she might flank, that is, slide off and hit somewhere.

Quest. How do you handle a boat to prevent that?

That depends somewhat upon the boat; some boats handle differently from others; if I was coming down in the Keokuk, and she was flanking into a snag or bar, if I could not prevent her by stopping one wheel and rounding her off, I would stop the boat entirely and back her out; it is not always you can do that; I would let her go on the bar or bank as easy as possible, if I could not do the former; it is not unnsual to meet strong winds blowing from Lake St. Croix; as liable to meet them there as elsewhere; never sank a barge on that bar; can't guess how many I have towed past there; have towed two, three or four at a time, but not three or four past there at a time; at that stage of water two barges were all that any boat should tow through there; have not towed more than two through there at that stage of water.

40 Quest. In that stage of water with two barges in tow, is there any necessity of running the starboard barge on the bar so as to crush her?

Ans. That would depend altogether upon circumstances; I mean this, that a boat often gets the advantage of us, and then we have to get the advantage of her.

Quest. If you have been piloting for as many years as you state, and have towed a great many barges through that crossing in the stage of water referred to, can't you answer more definitely as to whether, under any circumstances and what circumstances, there is a necessity of having a barge go on that bar so as to crush her?

Ans. I cannot more definitely than that it would depend upon how rapidly your boat was running, and what control you had of her, and what effect the wind would have if any was blowing; I mean by speed that she might be coming in under a slow bell or a full head; at different times it would have different effects; if I was coming in there with a boat and two barges I might let her come in with full head; if she did not look to suit me, would try to run her in under a slow bell or handle her in with the wheels to get her to suit me; I have failed to get through there without sticking; never damaged a boat or cargo, except the rigging on her; I do not know but this one, damaged on this particular crossing, this one that the N. Belle sunk.

Quest. How many barges daily, or about how many, were being towed through this crossing in the month of June, 1865.

Ans. I can't answer that; was not in the St. Paul trade at that time; all came down there that came above that point; no other place to come through at that stage of water; I have met with a very strong wind there coming out of Lake St. Croix; met one there last night; it troubles us to make a landing at Prescott; we do the best we can to make the crossing safely when the wind is blowing hard;

41 I have always got through when the wind was blowing hard out of Lake St. Croix, but have grounded barges once or twice.

Quest. Is there anything especially dangerous to the barge in grounding on that bar, more than grounding on other bars.

Ans. I think there is; in coming around the Point you come on a swing, and are more apt to get on the bar; there are other places as dangerous as that if you get aground.

Quest. What do you to prevent the swinging of a boat from one side to the other?

Ans. I don't know how to prevent it; I answer that a little different; I would try to prevent it, but it is not always you can prevent it; if I was coming down you would come down on a round, and if I found she was going to flank on the bar, I would stop her and back her up with one or both, or let her go on as easily as possible; it would not be extraordinary to do this under like circumstances; other men would do differently perhaps.

Quest. Can't you shape a boat almost as you are a mind to; I mean a double engine boat, by handling her with the wheels?

Ans. Not at all times, for two reasons; on account of room, another on account of wind, and a third by not having steam enough.

Quest. With both engines still, how quick can you reverse either?

Ans. Depends upon speed of boat when you stopped them; boat when perfectly still, engines will work either way; momentum of boat makes difference; with this boat under full head of steam, it would take 10 or 20 seconds; under full head this boat (the Keokuk) would make 18 miles an hour down stream; the N. Belle's engines will not reverse half as quick as this boat; I have been on both of them.

42 Quest. With the N. Belle running six miles an hour how quick will her engines reverse?

Ans. I can't tell; under common speed, it takes again as long to reverse her engines as this boat. I would always go through that crossing at Prescott at a low stage of water with a slow bell; sometimes, if it looked to suit me, I would jump her through, but it is not always best for barges to do so.

Ques. With what speed do you mean by a slow bell?

Ans. About one-fourth full head, or one-third, depends upon the boat and am't of speed we have; I mean by jumping a boat to go on with full head, and when she would strike, the swell would carry her over.

Re-examined.

The main part of that channel is not over 200 feet, perhaps 225; that may be the average width at that stage of water. I don't know length of the N. Belle; she is much longer than the Keokuk. I don't think I would handle the N. Belle and Keokuk the same in passing that place; would rather take the chances on this boat.

Cross ex'd.

Quest. How differently would you handle the N. Belle from what you would handle the Keokuk in the locality referred to, and for what reason or reasons, state fully.

Ans. I would not trust that boat as much as this, the Keokuk, for the reason that she handles much slower.

ABRAHAM LOONEY.

Subscribed and sworn to before me May 17th, 1866.

J. M. MILLER, *U. S. Com'r.*

Deposition of F. H. Tesson.

Frank F. Tesson, witness for respondent, being duly sworn, deposed and said :

I reside at La Crosse; business, pilot; employ of Davidson's
43 company, the respondents, for 4 years, and have been a pilot for 12 years, and been engaged in navigating Upper Miss'i and its tributaries for last 12 years, and am a licensed pilot.

Quest. On the 10th of June, 1865, what were you engaged in, and on what boat ?

Ans. Was on N. Belle as pilot. I know barge Brady; had the barges Brady and Jack Frost in tow on or about the 19th of June last; got one of them at Hastings; had them both when we got to Hastings. Bound on a voyage from St. Paul to La Crosse. The N. Belle was at that time one of the regular line of packets. The Brady met with an accident coming down, at Prescott Bar. Not sure whether we left both barges there or not; think we did. Left the Brady on the bar, and the J. Frost at the landing. We worked on the Brady to get her off until it was necesaary to leave her, so as to make our connection at La Crosse. Water was middling low at that time, about 3½ feet. This place is a point of difficulty in low water. It is a shoal and crooked place; channel not over 150 or 200 feet wide. The Northern Belle is 240 feet long, I think. I do not know whether we had one or two barges in tow when we struck the bar; knows we had the Brady.

Quest. Describe the manner and cause of the accident as particularly as you are able.

Ans. I came down; there is a point, and as you come down longside of the point, you can't get close to shore, for it is full of snags; therefore, you are cramped for room. When I came there, the Brady being on the starboard side, wind blowing off the Lake St. Croix struck me, and put me on the bar, and when they found that the boat was loose, and the Brady was aground, we pulled up the boat up to the point. Capt. West told me he was done with the engines, and I then had liberty to go where I pleased. I went down stairs, and looked over, and saw they were on board the Brady.
44 I supposed they went on board to take a line to her, and pull her up. Next thing was I seen Capt. West getting all the buckets, and they were cutting the decks of the barge, and hunting up all the pumps they could find; asked him what was the matter; he said, I guess we have busted her sides in.

(Objection now here made to statements of other parties.)

The barge struck first, and the boat swung against her, and then, I supposed that her head would swing up, and she swing up a little piece, and I went ahead on the boat, trying to pull the barge off. This happened when we first got into the bar, and it was afterwards that I saw them on board the Brady as before stated. There was pretty heavy breeze; it struck me on the larboard side; the Brady was on the starboard side.

Quest. Describe more particularly the manner in which the boat was handled before striking the bar.

Ans. When I found that the wind was blowing, I commenced backing up; the backing up was for to avoid getting on the bar. I knowed that the Brady was on the starboard side, and I got in shape, as I thought it would do. I went ahead on her, and the barge struck; her head swung off a little, and I went ahead again, and I found it would not do, so I stopped. Then they let go the barge after making one or two pulls, and hauled the boat to the foot of the island. When we got to the foot of the island, Capt. West told me he was done with the engines; I meant to go ahead past the bar when the wind took me up, and we went on the bar sideways; struck the bar pretty hard. I think we parted the tow line. When the barge struck the bar, the boat came on to the barge pretty hard; the boat struck the barge sideways. When a barge strikes a bar, and the boat has room to go ahead, she will swing in very hard; swinging is that she swings against the barge hard.

45 Quest. That effect is likely to be produced or may be produced upon the barge by such an occurrance?

Ans. If your boat has fenders strong enough and tow lines strong enough, you can jam the whole sides of a barge in, the weight is so great. If the striking is not so heavy, it will have the tendency to open her seams and produce a leak.

(Objection as immaterial to the last answer, and inadmissable.)

Quest. How is the lay of the land there relative to a wind blowing down Lake St. Croix.

(Same objection)

Ans. It is a point from Pt. Douglas, opposite Prescott, with heavy timber, and right at the mouth of Lake St. Croix. The crossing is very narrow, and the wind is likely to carry you off.

Quest. State whether the steamer N. Belle and barge Brady were in good condition, well and sufficiently manned, and how the barge was fastened to the steamer?

(Objected to as improper and inadmissable.)

Ans. The steamer was in good condition to the best of my knowledge, and I think the barge was all right, and suppose she (the barge) was well manned, good crew. I do not know how they man a barge, except by the crew of the boat. She had a sufficient and competent crew. As to the manner of fastning of the barge, she was fastened in the usual manner.

Quest. State whether the steamboat was properly and skilfully handled, or not, at that time, under the circumstances.

(Objected to as improper, leading and inadmissable.)

Ans. She could not be handled any better by no man, for I have been seven seasons on that s'boat, and that was the first barge I ever sunk with her.

Cross-ex'd.

A boat the size of the N. Belle carries two pilots.

Quest. How far above the floor of the main desk is the station of the pilot, when steering the N. Belle?

46 Ans. I should judge about 25 or 30 feet; first comes the main deck; above that is the cabin floor; then the hurricane deck, which is over the cabin; then the roof of the "texas," a cabin occupied by the capt. and officers of the boat, and on top of the roof of the main cabin; on top of this is the station of the pilot in the wheel-house, making three decks before you come to the pilot-house. There are movable windows in the pilot-house; the front windows are left open.

Quest. How much of the barge Brady could you see when in tow of the N. Belle, you being stationed at the pilot-house, at the wheel?

Ans. When you are at the wheel you could not see the barge; by looking out of the window you could see her.

Quest. Were your side windows open or shut?

Ans. Both sides open; it was a warm day. There was a strong wind blowing; it did not trouble me any; wind was blowing about a quarter down the river. I think that day there was a pretty strong wind; always breezy at that time of year; at that point it was stronger.

Quest. What is the breadth of the bottom of the N. Belle, or about?

Ans. She is 29 feet beam; that is the extreme breath of the top of the hull; am not certain but that she has 8 or 9 feet guards in addition to her beam, making 45 or 47 feet in extreme width. The barges are fastened outside of her guards. The Brady is about 18 or 20 feet wide.

Quest. About what is the breadth of the J. Frost?

Ans. She is about the same as the Brady.

Quest. If you had had more sea-room would there have been any trouble in going through that crossing?

Ans. No, sir. If we had not have had a barge on the starboard side we would have had no trouble in getting through. We have towed 4 barges with the N. Belle; place them 2 abreast; you could not handle your boat by towing your barges behind.

47 Quest. What water was your boat, the Belle, drawing at that time?

Ans. She might have been drawing at that time 3 feet, about; the boat was light. The Brady was drawing about 3½ feet; the deeper water was to the larboard in that channel, coming down. The Brady could not have struck the bar if she had been on the larboard side. The Brady would have drawn from 4 to 5 inches less water if she had had 1,000 bushels less wheat in her; if 2,000 less it would have made considerable difference, about a foot.

Quest. You say that when the wind first struck, when coming around the point, you backed the vessel up to put her in position, so that you thought you could go through.

Ans. Yes, sir, and then started ahead; started both engines ahead to go through.

Quest. Why did you not back far enough when you discovered the wind was coming off that point until you got your boat in a position which you knew would carry her through?

Ans. I thought I was far enough; it is a snaggy point above, and you cannot back up further than I did.

Q. If you were not absolutely certain that you could go through for want of sufficient channel by reason of the wind, why did you not lie to in the lee of the woods off Pt. Douglass until the wind lulled?

Ans. It is impossible to land there on account of the snags. The channel is not over 80 feet wide, and you would have to go down just as I did and take your chances, back up until you thought you could get through. When you start to go through the last crossing under the point, in order to get in shape after you come straight down, you have to reverse your engines, backing on the larboard wheel, and going ahead on the other in order to get yourself in the right position; then it brings your boat under no steerage; all the steerage you have are your engines, and if the wind would blow in the same direction as it did on that day you could not go
48 through unless you got aground.

Quest. If after getting your boat into position, and knowing the wind was blowing through there, you had started up with the starboard wheel instead of on both, what effect would that have had on the direction of the bow of the boat?

Ans. The idea of starting up on both wheels was with the idea to give her headway and steerage enough to carry through if we did touch. Starting with one wheel would not give you headway enough to get her in the channel, and you would have gone down on the bar below.

Quest. You say you stated that you, in attempting to make this crossing, you put your boat in the position you thought would do, and went ahead with both wheels, so as to give her steerage, and so that if you would touch you would carry the barge over. Is this after the fashion that you Mississippi folks call jumping a bar?

Ans. This is not jumping a bar; but when you are cramped, and you think you are headed right, and want to get through quick, we do as I have stated. We pilots call jumping a bar is when you have a shoal place and no other place to get through, and think your boat will rub, you put on steam and drive the boat over, and when you strike the bar, and the swell strikes you it carries you over.

Quest. You state that in this instance that when the Brady struck her lines broke; if her lines had not broken would you have carried the barge over, or what would take place?

Ans. It was bound to break something as long as the barge stuck fast. It would have been impossible to carry over; no lines would have carried over.

Quest. How much difference was there between the wind down the river that day and the wind on Lake St. Croix, and if any difference, what made it?

Ans. Don't think there was any difference in the wind that day.

49 Quest. When the barge struck the bar and parted her lines did the boat go ahead or stop?

Ans. The boat stopped; the lines jerked her back, and I stopped her. I knew nothing of the condition of the barge at that time; no, nothing about her condition except what others told me; have towed barges through that channel at that stage of water pretty often, all of 100 times; never sunk a barge at that place before.

Quest. Will a barge resist a pressure as much on her sides as on her bow?

Ans. Not as much.

Quest. Do you know whether there was any pressure on her sides at that time, and if yea, how do you know it?

Ans. Yes; I know it by the way the boat hit the barge; the barge hit the bar, and when the boat hit her I knew it by the motion of the boat. I have frequently felt the like motion from the same cause, very often in low water; it is a common occurrence to hit a bar. The N. Belle will carry in that stage of water not a great deal, about 100 tons. In high water she will carry about 300 tons. She draws about 30 inches when in good trim; the Addie Johnson draws about 20 inches when in good trim; she will carry about 400 tons in that stage of water. The Hudson is the only light draught boat that carries wheat in bulk; she will carry about 3 000 bushels of wheat in that stage of water. The Addie Johnson would carry, if she carried wheat in bulk, about not over 3,000 bushels; if she was fitted for it would carry about 5,000 or 6,000 bushels, without barges.

Quest. Do you know the hull of the old s'boat Frank Steele?

Ans. Yes, sir; she would carry about 12,000 bushels, as she is only a barge; she is a stronger barge than the Brady. If our steamer had come against her sides it would have caved her in. When you come to knuckling the side of a barge, one barge's sides are not stronger than another. Some of the barges of this company are stronger than others, that is, ought to be; some of our new barges are stronger; they are built different. The strength of the sides of these new barges is greater because they are higher out of the water, and when you come against them instead of hitting the fender you hit the guard. This will prevent the crushing in of the sides of the new barges to a certain extent.

Quest. To what extent as compared with the P. Brady and other low barges of her size, which press against the fenders instead of the guard of the boat?

(Objected to as immaterial and incompetent from this witness.)

Ans. These high barges have high sides and a deck all over, which the Brady has not, which gives them strength.

Quest. Where a steamer tows a barge with guards high out of the water, resting against the guards of a steamer, and the barge and the steamer come together on their guards, the pressure is dispersed along, is it not, the whole guards coming in contact?

Ans. That is so.

Quest. How is it when the side of a steamer strikes a low barge?

Ans. The difference that a high barge has over a low barge is that the low barges of this country are all smaller barges than the big ones, so that when a fender hits the side of a barge the small barge will go down 4 or 5 inches in the water, for it tilts her over.

Quest. How will that theory of tilting a barge work when the barge is aground and a concussion takes place between a steamer and an old-style low barge?

Ans. There is no tilting when she goes aground as far as she can go and has to take the blow.

Quest. You state that in making this channel, at Prescott, you are in a measure protected from the wind by the point. How much are you protected from the wind; how far before you reach the point do you feel the protection?

51 Ans. About half-a-mile; don't take long to run half-a-mile; ten (10) minutes in low water, when you have to work slow.

Quest. In attempting to pass through that channel if you had laid your boat with proper judgment and handled her properly could you not have gone through there and not grounded your barge?

Ans. Not with that wind in that stage of water.

Quest. If it was impossible with that stage and with the wind then blowing, which you had before entering that crossing, blowing down the river and down the lake, why did you attempt it?

Ans. You could not land after getting into the bend; I could not land unless I landed stern up stream; the only way to land coming down stream is to round too and head up.

Quest. Why did you not tie up before you got into this place?

Ans. First place, a pilot is not allowed to tie a boat without instructions from the capt., and the wind from St. Croix struck us there.

F. H. TESSON.

Subscribed and sworn to before me May 18th, 1866.

J. M. MILLER,
Clerk and Com'r, Wisconsin.

Exhibit "A."

UNITED STATES OF AMERICA,
City of La Crosse, La Crosse County, State of Wisconsin:

Be it known, by this public instrument of protest, that on the twentyeth day of June, in the year one thousand eight hundred and sixty-five, before me, Harvey E. Hubbard, police justice and justice of the peace, in and for the said La Crosse county and State, duly commissioned, legally qualified and acting as such, personally appeared Judson T. West, master of steamboat "Northern Belle," Jno. E. Morrison, first mate, and F. H. Tesson, pilot of

52 said steamboat, all of said steamboat Northern Belle, and all and each of whom being by me first duly cautioned and sworn according to law, did under oath make the following statement, to wit:

That these appearers, and the rest of the crew of said steamboat, left the port of St. Paul with said steamer on a voyage thence to La Crosse on the 19th day of June, aforesaid, A. D. one thousand eight hundred and sixty-five, and arrived at the landing at Hastings,

in the State of Minnesota, on the said 19th day of June, A. D. 1865, at about four o'clock in the afternoon of said day, and at the said landing at Hastings the said appearers took in tow of said steamboat "Northern Belle" a certain barge called the "Pat Brady," laden with four thousand and two and 40-60 (4,002 40-60) bushels of bulk wheat, "more or less," for account of Jno. Robson, at Hastings; that at the time said barge was taken in tow by said steamboat "Northern Belle" she, the said barge "Pat Brady," was tight, staunch and strong, and in every respect fit to perform her said intended voyage from said landing at Hastings to the city of La Crosse, Wisconsin; that the wheat in bulk in said barge Pat Brady was well and carefully loaded into said barge in a proper and secure manner; that the said barge Pat Brady, laden as aforesaid, was taken in tow by the said steamboat "Northern Belle" at Hastings, and that the said steamboat having the said barge "Pat Brady" in tow, with proper fastenings and tow lines, left the landing at Hastings aforesaid on the 19th day of June, A. D. 1865, on her said voyage from St. Paul to La Crosse aforesaid. That they, the said appearers, in said steamboat Northern Belle, having the barge Pat Brady in tow, proceeded on their voyage or trip down the Mississippi river to their destination; that when opposite the city of Prescott, Wisconsin, the wind blew so hard as to drive said barge on to a bar opposite said city of Prescott, and thereby the said barge grounded and commenced leaking while there; that the said barge Pat Brady was carefully
53 towed by said steamboat Northern Belle and was, up to the time of getting aground as aforesaid, dry, tight and staunch, and that the said steamboat and said barge Pat Brady were properly moored with proper lines and fastenings; and that about half-past seven o'clock in the evening the barge Pat Brady was discovered to be taking in freely of water from said cause, and that although every effort was made to prevent cargo of said barge Pat Brady from getting wet that the said barge Pat Brady, with her cargo aforesaid, about 8 o'clock p. m. of the 19th day of June, did fill with water sufficient to damage a considerable portion of the cargo of the said barge Pat Brady aforesaid.

Now, therefore, because of the premises, and as all the loss, damage and injury which already has happened, or may hereafter appear to have happened or accrued to said barge "Pat Brady," has been occasioned solely by causes herein set forth, and cannot be attributed to any insufficiency of the said steamboat and barge, or default, or negligence of said master or any of his crew; and inasmuch as the declaration above referred to is sufficient for the purpose required, he, the said master, now requires me, the said police justice and justice of the peace, to make his protest and this public act thereof, that the same may be recorded and remain in full force and virtue, as of right shall appertain.

And, therefore, the said master doth protest, and I, said police justice and justice of the peace, at his special instance, do by these presents publicly and solemnly protest against said accident and occurrences for all the losses, costs, damages and expenses which the

said master, owners, freightors or shippers in or on the said steamboat and barge may suffer, so that no part thereof shall be incurred by or fall upon him, the said master, or any of his crew.

This done and protested at the city of La Crosse, La Crosse
54 county, and State of Wisconsin, and signed and sworn to as aforesaid, this twentieth (20th) day of June, in the year one thousand eight hundred and sixty-five.

J. T. WEST.
JOHN E. MORRISON.
F. H. TESSON.
HARVEY E. HUBBARD.
Police Justice and Justice of the Peace.

[25-c. int. rev. stamp.]

Hearing.

SEPTEMBER 3, 1866.

This day came the parties, by their advocates, and this cause came on to be heard upon the pleadings and proofs, and not being concluded, the further hearing was adjourned until to-morrow morning.

SEPTEMBER 4, 1866.

This day came the parties, by their advocates, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

SEPTEMBER 5, 1866.

This day came the parties, by their advocates, and the hearing of this cause was resumed, and not being concluded it was adjourned until Saturday morning next.

Concluded, &c.

SEPTEMBER 8, 1866.

This day came the parties, by their advocates, and the hearing of this cause was concluded, and the court not being sufficiently advised held the same under consideration.

Decree.

And now at this same term, to wit, September term, 1866, and on the twelfth day thereof, to wit, on the first day of October, A. D. 1866, the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT NORTHERN BELLE AND BARGE } In admiralty.
Pat Brady, the La Crosse & Minnesota
Steam Packet Company, claimant.

This day came the parties, by their advocates, and on con-
55 sideration of the pleadings and proofs, and the arguments

thereon, it is ordered by the court that the steamboat Northern Belle, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady are liable in maritime lien as propounded in the libel to the amount of three thousand and sixty-five dollars and forty cents.

Whereupon it is ordered, adjudged and decreed by the court that the libelant do have and recover of the La Crosse and Minnesota Steam Packet Company, the claimant, and Lewis J. Higby and David Ferguson, its stipulators, the said sum of three thousand and sixty-five dollars and forty cents, with costs to be taxed, and in default of the payment of this decree and the costs within ten days that an execution be issued against them for the same.

A. G. MILLER.

Appeal.

And the same day (October 1, 1866) came the respondents in open court and prayed an appeal to the United States Circuit Court for the district of Wisconsin. Whereupon it is ordered by the court that the said appeal be and is hereby allowed, and that said respondents enter into a bond with sureties, to be approved by the judge, in the penalty of six thousand five hundred dollars for a supersedeas within ten days.

Appeal bond.

OCTOBER 9, 1866.

This day came the La Crosse & Minnesota Steam Packet Company and filed its bond in the penalty of eight thousand dollars, with Peyton S. Davidson as surety, as follows:

Know all men by these presents that we, the La Crosse & Minnesota Steam Packet Company, as principal, and Peyton S. Davidson, are held and firmly bound unto John Robson in the sum of six thousand and five hundred dollars lawful money of the United States of America, to be paid to the said John Robson, his executors, administrators or assigns, to which payment well and truly to be
56 made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents. Sealed with our seals this 6th day of October, A. D. 1866.

Whereas the above-bounden La Crosse and Minnesota Steam Packet Company and Lewis J. Higby and David Ferguson have appealed to the Circuit Court of the United States for the district of Wisconsin from a decree of the District Court of the United States for said district, bearing date October 1st, A. D. 1866, in a cause in which the said John Robson was libellant and the said La Crosse and Minnesota Steam Packet Company was claimant of the steamboat Northern Belle and barge Pat Brady, and respondent:

Now, therefore, the condition of this obligation is such that if the aboved-named appellants shall prosecute their appeal with effect and

pay all such costs and damages, charges and expenses as shall be awarded and decreed against them as such appellants, and answer any decree that may be made therein, then this obligation to be null and void, otherwise of force.

The La Crosse and Minnesota Steam Packet Company, by—
[SEAL.] P. S. DAVIDSON, *Supt.*
[SEAL.] P. S. DAVIDSON.

Signed, sealed and delivered in the presence of—
CYRUS K. LORD, *Court Commissioner,*
U. S. Circuit Court, Dist. of Wisconsin.

DISTRICT OF WISCONSIN, *ss*:

Peyton S. Davidson being duly sworn deposes and says, that they are severally worth the sum of six thousand five hundred dollars over and above all debts and liabilities and exemptions allowed by statute.

P. S. DAVIDSON.

Subscribed and sworn to this 8th day of October, A. D. 1866, before me, by Peyton S. Davidson.

CYRUS K. LORD,
Court Commissioner U. S. Circuit Court,
Dist. of Wisconsin.

OCTOBER 9, 1866.

This bond approved.

A. G. MILLER, *Judge.*

57 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the District Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the case of John Robson against the steamboat Northern Belle and barge Pat Brady.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

[5-c. rev. stamp cancelled.]

(End of the record from the District Court.)

58 Circuit Court of the U. S.

Affidavit of Wm. Hull.

And afterwards, to wit, on the 24th day of September, A. D. 1867, the following affidavit was filed on the part of the respondent:

HOME INSURANCE COMPANY
vs.
STEAMER KEOKUK AND BARGE PAT BRADY, and La Crosse & Minnesota Steam Packet Company, claimants. } On appeal.

JOHN ROBSON
vs.
STEAMER NORTHERN BELLE AND BARGE PAT Brady, and La Crosse & Minnesota Steam Packet Company. } On appeal.

DISTRICT OF WISCONSIN, *ss*:

William Hull, being duly sworn, deposes and says, that he is the general attorney and agent in all legal matters of the La Crosse & Minnesota Steam Packet Company, and that he had charge of looking up the testimony for said company; that by an arrangement between the parties, the respective counsel of the parties attended at La Crosse and Winona, on the Mississippi river, and took all the testimony relative to the navigation and seaworthiness of said barges, excepting the testimony of Jasper Humphreys and P. M. Davidson, which was taken at Milwaukee, on the part of the libellant, after the other testimony had been taken, and just before the hearing of said causes; that said two witnesses testified, among other things, that said barges were not seaworthy, because they were built without natural knees; that said question was not raised until said last two witnesses were examined, and that after said examination was
59 had this deponent was unable to furnish testimony to rebut said testimony, but that in truth and in fact no barges or steamboats used on the Upper Mississippi are built with natural knees, but are all built in this respect as the barges of said claimant are built; that the said claimant has testimony here to show that fact, and believes that these causes cannot be properly tried without the admission of said evidence.

WILLIAM HULL.

Subscribed and sworn to before me this 24th day of Sept., 1867.
EDWARD KURTZ, *Clerk.*

And the said deponent further says, that the reason why said testimony was not taken was because this deponent supposed that an order of the Circuit Court was necessary to enable the claimant to take additional testimony, and that on inquiry of the district judge,

by this claimant's counsel, he understood from him that such order was necessary before said testimony could be taken.

WILLIAM HULL.

Subscribed and sworn to before me, Sept. 24th, 1867.

EDWARD KURTZ, *Clerk.*

60 *Hearing in Circuit Court.*

And now at this same term, to wit, Sept. term, A. D. 1867, and on the fourteenth day thereof, to wit, on the 24th day of September, A. D. 1867, the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT NORTHERN BELLE & BARGE Pat Brady; the La Crosse & Minn. Steam Packet Company, claimant. } Appeal in admiralty.

This day came the parties, by their counsel, Mess. Emmons & Van Dyke appearing for the libellant, and Messrs. Arrington and John W. Cary for the respondents, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and the hearing being concluded, the same was held under advisement.

Decree of affirmance.

And afterwards, to wit, on the 21st day of the said term, to wit, on the 25th day of November, A. D. 1867, the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT NORTHERN BELLE AND BARGE Pat Brady, the La Crosse and Minnesota Steam Packet Company, claimant. } Appeal in admiralty.

The court having considered and being now fully advised upon the matters heretofore submitted herein, affirm the decree of the District Court, and it appearing from the record that a decree was rendered in the District Court on the first day of October, in the year of our Lord one thousand eight hundred and sixty-six, in favor of the libellant, for the sum of three thousand and sixty-five dollars and forty cents damages, together with costs:

It is thereupon ordered, adjudged and decreed by the court, that the respondents pay to the libellant the said sum of three thousand and sixty-five dollars and forty cents, the amount of the decree
61 aforesaid, together with two hundred and forty-seven dollars and thirty-eight cents, the interest on said decree from the said first day of October, in the year of our Lord one thousand eight hundred and sixty-six, amounting in all to the sum of three thousand three hundred and twelve dollars and seventy-eight cents, together

with the costs herein to be taxed, and also the costs decreed in the District Court within ten days from this date, and that in default thereof the said libellant may have his execution therefor against the said claimant, the La Crosse and Minnesota Steam Packet Company, and also against Lewis J. Higby and David Ferguson, the stipulators of the said claimant.

D. DAVIS.

Appeal.

And afterwards, to wit, on the 22nd day of said term, to wit, on the second day of December, A. D. 1867, the following proceedings were had, to wit:

JOHN ROBSON
vs.
THE STEAMBOAT NORTHERN BELLE AND BARGE } Appeal in admiralty.
Pat Brady, the La Crosse & Minnesota Steam Packet Company, claimant.

This day came the La Crosse & Minnesota Steam Packet Company, claimant, and Lewis J. Higby and David Ferguson, stipulators of said claimant, by their counsel, Mr. Cary, and prayed an appeal to the Supreme Court of the United States, with an order for supersedeas, as follows:

Circuit Court of the United States for the district of Wisconsin.

JOHN ROBSON, libellant,
vs.
THE STEAMBOAT NORTHERN BELLE AND BARGE
Pat Brady, the La Crosse & Minnesota Steam Packet Company, claimant and respondent, and Lewis J. Higby and David Ferguson, stipulators of said claimant.

62 The above-named respondent and stipulators, conceiving themselves aggrieved by the final sentence or decree entered on the 25th day of November, A. D. 1867, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record, proceedings and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

JOHN W. CARY,
Proctor for Respondent and Stipulators.

Appeal allowed.

Whereupon it is ordered by the court that an appeal be and is allowed, and that a bond for supersedeas, to be approved by the court or a judge thereof, be given, with sureties, in the penalty of seven thousand dollars.

Circuit Court of the United States for the district of Wisconsin.

Appeal bond.

DECEMBER 4, 1867.

Bond for supersedeas filed as follows:

STEAMBOAT NORTHERN BELLE AND BARGE PAT Brady, La Crosse and Minnesota Steam Packet Company, claimant, and Lewis J. Higby and David Ferguson, stipulators of said claimant, appellants, *vs.* JOHN ROBSON, libellant and appellee. } In admiralty.

Know all men by these presents that we, William F. Davidson, of St. Paul, Minnesota, and S. S. Merrill, of Milwaukee, Wisconsin, are held and firmly bound unto the above-named John Robson, in the sum of seven thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly, by these presents. Sealed with our seals and dated the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

63 Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States for the district of Wisconsin: Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] WM. F. DAVIDSON.
[SEAL.] S. S. MERRILL.

Sealed and delivered and taken and acknowledged this 4th day of December, A. D. 1867, before me.

EDWARD KURTZ, *Clerk.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

William F. Davidson and S. S. Merrill, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of seven thousand dollars over and above all his just debts and liabilities.

WM. F. DAVIDSON.
S. S. MERRILL.

Sworn to before me this 4th day of December, 1867.

EDWARD KURTZ, *Clerk.*

Endorsed: Dec. 4, 1867. This bond approved as a supersedeas. A. G. Miller, district judge. Filed Dec. 4, 1867, and citation issued.

64 UNITED STATES OF AMERICA, *District of Wisconsin, ss*:

I, Edmund Kurtz, clerk of the Circuit Court of the United States of America, for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the case of John Robson against the steamboat Northern Bell and barge Pat Brady.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee in the said district of Wisconsin, this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-second.

[SEAL.] EDWARD KURTZ, *Clerk.*

65 The United States of America to John Robson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the Circuit Court of the United States of America for the district of Wisconsin, wherein the steamboat Northern Belle and barge Pat Brady, the La Crosse and Minnesota Steam Packet Company, claimant and respondent, Lewis J. Higby and David Ferguson, stipulators of said claimant, are appellants, and you are appelle, to show cause, if any there be, why the decree passed against the said the La Crosse and Minnesota Steam Packet Company, Lewis J. Higby and David Ferguson, should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL] A. G. MILLER,
District Judge.

We hereby admit service of the foregoing citation, this 12th December, A. D. 1867.

EMMONS & VAN DYKE,
Proctors for Libellant.

SUPREME COURT

OF THE

UNITED STATES.

DECEMBER TERM, 1869.

No. 141.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, The La Crosse & Minnesota Steam Packet Company, Claimant and Respondent, and Lewis J. Higby and David Ferguson, Stipulators of said Claimant, *Appellant*,

vs.

JOHN ROBSON.

BRIEF FOR APPELLANTS

JOHN W. CARY, *Of Counsel.*

Starrs' Print, Milwaukee.

SUPREME COURT

OF THE

UNITED STATES.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, The La Crosse & Minnesota Packet Co., Claimant and Respondent, and Lewis J. Higby and David Ferguson, Stipulators of said Claimant, *Appellants*,

vs.

JOHN ROBSON, *Appellee.*

This suit was brought to recover for the loss of a cargo of wheat shipped in bulk on board the barge Pat. Brady, at Hastings, Minnesota, on the 19th day of June, 1865, and taken in tow by the steamboat Northern Belle, to be towed down the Mississippi River to La Crosse, in the State of Wisconsin. The libel charges that by reason of the unseaworthiness of the steamboat and barge, and the decayed, weak and rotton condition of said barge, and its entire unfitness to carry wheat in bulk, and by reason of the negligent, careless and improper conduct of the master, his mariners and servants, with reference to said wheat, the same became damaged and wholly lost to the libellant. Respondant's answer denies these allegations in the libel, and alleges that on the 19th day of June, 1865, when said steamboat and barge had arrived opposite the city of Prescott, in the State of Wisconsin, the wind was so strong and blew so hard that it drove said barge on to a bar opposite said city of Prescott, so that said barge grounded on said bar, and while so grounded, and in consequence of the strain and injury thereby received, and the violence of the storm, commenced leaking, and a part of her cargo was wet and

damaged. It is also alleged that the steamboat and barge were seaworthy, tight, staunch and strong, well and sufficiently manned and equipped, and in every respect fit to perform their intended voyage, and that every effort was made to save the cargo. The bill of lading contained the usual exceptions, to wit: the unavoidable dangers of river and fire.

Many of the features of this case are similar to those of number 139 of the present term, the barge in question being the same in both cases, and although the causes of the accident in each case were unlike, yet the principles of law to be applied to the two cases are the same. Having made a full brief in number 139, we wish to refer to that brief, so far as it is applicable to this case, and especially to that part of it relating to the seaworthiness of the barge, as the same testimony on that subject was, by stipulation, used in both cases.

POINTS.

The loss was occasioned by the unavoidable danger of the river, and hence is within the exception named in the bill of lading.

By the deposition of Judson T. West, (Trans. p. 17) it appears that the steamboat had two barges in tow, the Jack Frost on her larboard side with about 3,800 bushels of wheat on board, and the Pat. Brady on the starboard side, and that they stranded the Brady on the bar opposite Prescott. That they had to make a very short turn around the foot of the point, and there was a very narrow channel between that point and the sand-bar on the starboard side, that turn being made to the larboard. The wind was blowing quite hard, and blew us on to the bar. The wind struck the vessel on the larboard side as she turned the point. The wind blowing on the larboard side would have the effect of pressing against or bringing the weight of the steamer and other barge on to the barge Pat Brady with considerable force. The pressure of the steamboat and other barge driven by the wind against the Brady was sufficient to cause the leak. In his opinion the steamboat was handled with all the care and skill she could have had.

F. H. Tesson the pilot in charge of boat at time of accident, testifies, (Trans. p. 28) that the place where the accident happened was a difficult one to navigate, that the water was shoal and the channel narrow and crooked. There is a point, and as you come down long

side of the point, you can't get close to the shore, for it is full of snags, therefore you are cramped for room. When I came there, the Brady being on starboard side, wind blowing off the Lake St. Croix, struck me and put me on the bar. The barge struck first, and the boat swung against her. There was a pretty heavy breeze ; it struck me on the larboard side ; the Brady was on the starboard side. When the barge struck the bar, the boat came on the barge pretty ha.d ; the boat struck the barge sideways. It is a point from Pt. Douglas, opposite Prescott, with heavy timber, and right at the mouth of Lake St. Croix. The crossing is very narrow, and the wind is likely to carry you off.

By the foregoing testimony it appears that the accident was caused by the wind suddenly striking the boat as she came around a point, and while in a narrow channel, thereby stranding the barge Brady on the bar; and that the boat and other barge swung against her, sprung in her side and caused her to leak.

The facts clearly show that it was an unavoidable accident, arising from the perils of navigation.

2. The barge was seaworthy. Upon this point see brief and case in number 139.

JOHN W. CARY,

Appellant's Counsel.

Supreme Court of the United States.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, THE LA CROSSE & MINNESOTA STEAM PACKET COMPANY, Claimant and Respondent, and LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANT,

Appellants,

vs.

JOHN ROBSON.

BRIEF FOR APPELLEE.

N. J. EMMONS,

Counsel for Appellee.

Supreme Court of the United States.

THE STEAMBOAT NORTHERN BELLE AND BARGE PAT BRADY, THE LA CROSSE & MINNESOTA STEAM PACKET COMPANY, Claimant and Respondent, and LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANT,

Appellants,

vs.

JOHN ROBSON.

BRIEF FOR APPELLEE.

None but the most familiar questions of the law governing the liabilities of common carriers by water, are involved in this case. The libellant charged negligence and unskillfulness in navigation, and the unseaworthiness of the barge on which his cargo of wheat was laden. Upon these questions of fact, the courts below found against the respondent; and applying simple and well ascertained principle of law, decreed for the libellant.

The opinion pronounced by the District Court was as follows:

MILLER, Judge.

"This libel is brought for the value of a cargo of wheat, shipped in bulk at Hastings, in Minnesota, on the barge Pat Brady, to be towed by the steamboat Northern Belle on the Mississippi river, and delivered at La Crosse, in Wisconsin, in good order, *the unavoidable dangers of river and fire only excepted.* It is charged in the libel, that the barge was sunk and the wheat damaged, in consequence of the unseaworthiness of the barge, and of the negligence and unskillfulness of the officers and crew of the boat.

The answer of respondent alleges, that the barge was tight, staunch and strong, and in every respect fit to perform the voyage, and was seaworthy. That the wheat was carefully stowed in the barge, which was taken in tow by the boat. That when opposite Prescott, the wind was so strong, and blew so hard, that it drove the barge on to a bar, so that the barge stranded on the bar. And while so grounded, and in consequence of the strain and injury thereby received, and the violence of the storm, the barge commenced leaking. That the failure to deliver the wheat at La Crosse was the result of unavoidable dangers of river navigation, and not in any manner of default of respondent, or of unseaworthiness of the barge. The boat and barge belonged to claimant, and were used in the business of carrying wheat in bulk.

A loss by perils of the sea, or dangers of river navigation, includes such losses only to the cargo as are of an extraordinary nature, or arise from irrestible force, or from inevitable accidents, or from some overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. If the loss occurs by a peril which might have been avoided, by the exercise of any reasonable skill or diligence at the time when it occurred, it is not deemed to be, in the sense of the phrase, such a loss by the peril of the sea or

the dangers of the river, as will exempt the carrier from liability, but rather a loss by his gross negligence. A loss from the effects of storms and tempests, in straining the ship, or causing her to spring a leak, or ship a sea, whereby damage or injury is done to the goods on board, are losses perfectly attributable to the perils of the sea; although in a mitigated sense, they may be said to be ordinary accidents. Story on Bailments, § 512, and cases referred to.

The captain of the boat testified, that, in his judgment, the cause of the barge springing a leak was by her striking the bar, and the weight of the boat, at the time of her running aground, pressed against the barge with sufficient force to open her seams, which caused her to leak. Did not consider her hard aground when she first struck. Had two barges in tow. The wind was blowing down stream quite hard. The Pat Brady was on the starboard side, and the Jack Frost on the larboard. The boat was quartering across stream, to make the landing at Prescott. That was one or the most troublesome bars in the river at that season, on accout of low water. Had to make a very short turn around the point; and there is a very narrow channel between that point and the sand bar, on the starboard side, the turn being more to the larboard. The wind was blowing quite hard, and blew us on the bar. It struck the vessel on the larboard side. We hoped to clear the bar, but did strike it. The boat had 75 tons aboard. The Frost had 3,800 bushels of wheat, and the Brady 4,000 bushels. The force against the bar was sufficient to cause the leak, if the barge was in good condition. Frank Tillson is a good pilot, and had charge of the boat.

The breadth of the channel was not over 200 feet. The boat and barge drew three to three and a half feet water. The bar is well known. It was not then above water. The barge was not broken in any way. It was a clear day, but windy. Blew harder than usually, on account of wind from Lake St. Croix. We went on the bar easily. Did not

think the wind was blowing too hard to navigate the boat. Have seen the wind blow harder. That was a stiff breeze, and it was hard to make places. The wind was blowing strong all day down the river. Knew the difficulties of navigation at that point, at that stage of water and course of the wind, before he attempted to pass through it. Less danger with one barge than with two; but thought we could go through with two. Was perfectly familar with the channel at that stage of water. There was more probability of not getting aground, than of getting aground with two barges.

The pilot testified that he had the two barges in tow. The barge Brady met with an accident at Prescott bar. That place is a point of difficulty in low water. It is a shoal and crooked place. The channel is not over 150 to 200 feet wide. The Brady was on the starboard side; wind blowing off Lake St. Croix; struck and put me on the bar. It was a pretty heavy breeze—it struck on the larboard side. Commenced backing up to avoid getting on the bar. Got in shape as we thought it would do, and went ahead and the barge struck. Meant to go ahead past the bar, when the wind took me up and we went on the bar sideways, pretty hard. Both sides of the pilot house were open. It was a warm day in June. The wind was strong, but it did not trouble me much. The wind was blowing about a quarter down the river all day, and at that point it is usually stronger. Do not think there was any difference in the wind that day. Have taken barges through there one hundred times, and never sunk a barge there before.

Libellant testified that the water was so low that the barges could not take a full load, not over three-fourths of a load. The wind was blowing not particularly strong—not a gale; but breeze enough to make the boat flank a little. The accident happened just at the outlet of Lake St. Croix. Was a quarter to half a mile behind the boat and barges coming down. Saw them strike, and thought the barge was out of the channel. She struck on the sand, in shoal water.

It appears from the evidence that the accident occurred in the day time, and on a warm day in June. The water was so low that the barges had not over three-fourths of a load. The captain and pilot were well acquainted with the bar at Prescott, and the pilot had never met with an accident there. They could have passed in the channel, which was 150 to 200 feet, in safety with one barge, and they knew that the wind that was blowing fresh all day, might be more so at that point. The wind was not a gale, but breeze enough to make the boat flank some. The wind was not so strong as to require the pilot house to be closed, or to inconvenience the pilot. The accident was not *unavoidable*. One of the barges should have been taken through at a time. The pilot knew one barge could be taken through safely. He knew the bar, and the course of the wind, and the low stage of water; and with all this knowledge, he backed and attempted to force his boat and two barges, through or over the sand bar, at the risk of breaking something. Lines might have been put forward to secure the boat from flanking, and should have been done. If the pilot was running on the starboard side of the channel, as testified by libellant, then he was in fault for not exercising more care and diligence to avoid the accident. The carrier is in the light of an insurer, and must establish the exception in the bill of lading beyond a reasonable doubt. Pressure of the barge against the bar caused her seams to open. See The Louisiana 3 Wallace 164—173—174.

After a thorough examination of the testimony, I am well satisfied that the barge was not of sufficient strength to carry wheat in bulk, safely, particularly at low stages of water. From her age and construction, she was not strong enough to resist the inward pressure of bulk wheat on her sides, and the outward pressure of the tow-boat and a second barge against the sand bar. Carriers on the river of bulk wheat stowed in barges, must have barges well and firmly built, in the best manner and of the best materials. A carrier's first duty, and

one that is implied by law, when he is engaged in transporting goods by water, is to provide a seaworthy vessel, tight and staunch, and suitable in every respect to the particular service in which she may be employed. It is just as necessary that a barge employed in carrying wheat in bulk, should be tight, staunch and strong, as a ship, or any other vessel. The cargo is liable to damage by wet, and by shifting and settling, it presses hard on the walls of the barge. The barge Pat Brady does not come up to requirements of the law. She was old and slightly built, with knuckles instead of knees. But five weeks prior to the accident in question, by being pressed against something when in tow of the steamboat Keokuk, the seams of this barge opened, and her butts sprung, as in this case. Repairs were made on her by putting in some new timbers, but she still remained an old and weak barge, liable to give way at any time. Witnesses who examined her after the repairs, testify that portions of her timbers were entirely decayed. It is quite certain that the barge was not of sufficient strength to resist an effort to plough through a sand bar, or the pressure of short turns on a bar, for the sake of speed, as appears to be the practice of the officers of claimant.

It was the duty of the carrier to see to the sufficiency of the barge. Any opinions expressed upon that subject by agents of the insurance company, or by the shipper, form no excuse. The whole responsibility of the seaworthiness or fitness of the barge, rests with the carrier, and he is responsible for defects in it. Upon a casual view, the barge may have been thought nearly as good as new after the repairs, but at the same time she is proven to be old and rotten. Claimant has failed to sustain the answer, either as to the seaworthiness of the barge, or the exception of dangers of the river, and the decree must be for libellant."

Aliusion is made to a former accident happening to the same barge. It refers to the case of Home Insurance Company against the barge and steamer Keokuk, here on appeal, and

number of the present term. The two cases were heard together in the courts below.

His Honor, Mr. Justice DAVIS, in an oral opinion, sustains the views of the District Judge, and affirmed the decree.

We deem it needless—in advance at least—to attempt to make stronger the case of the appellee, by argument or suggestion. The rule to affirm, in cases like the present, has been too often repeated in this court to require a citation of the authorities.

N. J. EMMONS,
Counsel for Appellee.